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10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 Anthony Catena,

13 Plaintiff,

14 v.

15 First Financial Asset Management
 16 of Delaware, Inc.,

17 Defendant.

18 **Case No: '14CV1100 JLS WVG**

19 **Complaint For Damages**

Jury Trial Demanded

20 **INTRODUCTION**

- 21 1. The United States Congress has found abundant evidence of the use of
 22 abusive, deceptive, and unfair debt collection practices by many debt
 23 collectors, and has determined that abusive debt collection practices
 24 contribute to the number of personal bankruptcies, to marital instability, to the
 25 loss of jobs, and to invasions of individual privacy. Congress wrote the Fair
 26 Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (hereinafter
 27 “FDCPA”), to eliminate abusive debt collection practices by debt collectors,
 28 to insure that those debt collectors who refrain from using abusive debt



1 collection practices are not competitively disadvantaged, and to promote
2 consistent State action to protect consumers against debt collection abuses.

3 2. The California legislature has determined that the banking and credit system
4 and grantors of credit to consumers are dependent upon the collection of just
5 and owing debts and that unfair or deceptive collection practices undermine
6 the public confidence that is essential to the continued functioning of the
7 banking and credit system and sound extensions of credit to consumers. The
8 Legislature has further determined that there is a need to ensure that debt
9 collectors exercise this responsibility with fairness, honesty and due regard
10 for the debtor's rights and that debt collectors must be prohibited from
11 engaging in unfair or deceptive acts or practices.

12 3. Anthony Catena, ("Plaintiff"), through Plaintiff's attorneys, brings this action
13 to challenge the actions of First Financial Asset Management of Delaware,
14 Inc., ("Defendant"), with regard to attempts by Defendant to unlawfully and
15 abusively collect a debt allegedly owed by Plaintiff, and this conduct caused
16 Plaintiff damages.

17 4. Plaintiff makes these allegations on information and belief, with the exception
18 of those allegations that pertain to a plaintiff, or to a plaintiff's counsel, which
19 Plaintiff alleges on personal knowledge.

20 5. While many violations are described below with specificity, this Complaint
21 alleges violations of the statutes cited in their entirety.

22 6. Unless otherwise stated, all the conduct engaged in by Defendant took place
23 in California.

24 7. Any violations by Defendant were knowing, willful, and intentional, and
25 Defendant did not maintain procedures reasonably adapted to avoid any such
26 violation.

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JURISDICTION AND VENUE

8. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims.
 9. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq. ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.32 ("Rosenthal Act").
 10. Plaintiff is a natural person who resides in the City of Ocean Beach, County of San Diego, State of California.
 11. Plaintiff resides in San Diego County, as defined by 28 U.S.C. § 1391c(1), the judicial district in which this lawsuit is brought.
 12. At the time of the substantial part of the events or omissions giving rise to the claim occurred, specifically, Defendant disclosing Plaintiff's debt to Plaintiff's father, Plaintiff was physically located in the City of Ocean Beach, County of San Diego, State of California.
 13. Because a substantial part of the events or omissions giving rise to the claim occurred in San Diego County, venue is proper pursuant to 28 U.S.C. § 1391b(2).
 14. At all times relevant, Defendant conducted business within the State of California.

PARTIES

15. Plaintiff is a natural person who resides in the City of Ocean Beach, State of California.
 16. Defendant is located in the City of Phoenix, in the State of Arizona.
 17. Plaintiff is obligated or allegedly obligated to pay a debt, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).
 18. Defendant is a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the collection of

1 debts, or who regularly collects or attempts to collect, directly or indirectly,
2 debts owed or due or asserted to be owed or due another and is therefore a
3 debt collector as that phrase is defined by 15 U.S.C. § 1692a(6).

- 4 19. Plaintiff is a natural person from whom a debt collector sought to collect a
5 consumer debt which was due and owing or alleged to be due and owing from
6 Plaintiff, and is a “debtor” as that term is defined by California Civil Code §
7 1788.2(h).
- 8 20. Defendant, in the ordinary course of business, regularly, on behalf of himself,
9 herself, or others, engages in debt collection as that term is defined by
10 California Civil Code § 1788.2(b), is therefore a debt collector as that term is
11 defined by California Civil Code § 1788.2(c).
- 12 21. This case involves money, property or their equivalent, due or owing or
13 alleged to be due or owing from a natural person by reason of a consumer
14 credit transaction. As such, this action arises out of a consumer debt and
15 “consumer credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

16 **FACTUAL ALLEGATIONS**

- 17 22. Sometime before April 18, 2014, Plaintiff is alleged to have incurred certain
18 financial obligations with Alamo Rent A Car.
- 19 23. These financial obligations were primarily for personal, family or household
20 purposes and are therefore a “debt” as that term is defined by 15 U.S.C.
21 §1692a(5).
- 22 24. These alleged obligations were money, property, or their equivalent, which is
23 due or owing, or alleged to be due or owing, from a natural person to another
24 person and are therefore a “debt” as that term is defined by California Civil
25 Code §1788.2(d), and a “consumer debt” as that term is defined by California
26 Civil Code §1788.2(f).



- 1 25. Sometime thereafter, but before April 18, 2014, Plaintiff allegedly fell behind
- 2 in the payments allegedly owed on the alleged debt. Plaintiff currently takes
- 3 no position as to the validity of this alleged debt.
- 4 26. Subsequently, but before April 18, 2014, the alleged debt was assigned,
- 5 placed, or otherwise transferred, to Defendant for collection.
- 6 27. On or about April 18, 2014, Defendant made a telephone call to Plaintiff's
- 7 father and communicated with Plaintiff's father in connection with the
- 8 collection of Plaintiff's alleged debt.
- 9 28. This communication to Plaintiff's father was a "communication" as that term
- 10 is defined by 15 U.S.C. § 1692(a)(2).
- 11 29. This communication was a "debt collection" as Cal. Civ. Code 1788.2(b)
- 12 defines that phrase.
- 13 30. During Defendant's April 18, 2014 phone call with Plaintiff's father,
- 14 Defendant disclosed the amount of Plaintiff's alleged debt with Plaintiff's
- 15 father and stated that Plaintiff owed the alleged debt to Defendant.
- 16 31. Except as provided in 15 U.S.C. § 1692b, and without the prior consent of the
- 17 consumer given directly to the Defendants, and without the express
- 18 permission of a court of competent jurisdiction, and for a purpose not
- 19 reasonably necessary to effectuate a postjudgment judicial remedy,
- 20 Defendants communicated, in connection with the collection of a debt, with a
- 21 person other than the consumer, his attorney, a consumer reporting agency,
- 22 the creditor, the attorney of the creditor, or the attorney of Defendants.
- 23 Consequently, Defendants violated 15 U.S.C. § 1692c(b).
- 24 32. Because this violated certain portions of the federal Fair Debt Collection
- 25 Practices Act as these portions are incorporated by reference in the Rosenthal
- 26 Fair Debt Collection Practices Act, through California Civil Code § 1788.17,
- 27 this conduct or omission violated Cal. Civ. Code § 1788.17.

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CAUSES OF ACTION

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

15 U.S.C. §§ 1692 ET SEQ.

- 5 33. Plaintiff repeats, re-alleges, and incorporates by reference, all other
6 paragraphs.

7 34. The foregoing acts and omissions constitute numerous and multiple violations
8 of the FDCPA, including but not limited to each and every one of the above-
9 cited provisions of the FDCPA, 15 U.S.C. § 1692 et seq.

10 35. As a result of each and every violation of the FDCPA, Plaintiff is entitled to
11 any actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in
12 an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and,
13 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from
14 Defendant.

COUNT II

ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT (ROSENTHAL ACT)

CAL. CIV. CODE §§ 1788-1788.32

- 18 36. Plaintiff repeats, re-alleges, and incorporates by reference, all other
19 paragraphs.

20 37. The foregoing acts and omissions constitute numerous and multiple violations
21 of the Rosenthal Act, including but not limited to each and every one of the
22 above-cited provisions of the Rosenthal Act, Cal. Civ. Code §§ 1788-1788.32

23 38. As a result of each and every violation of the Rosenthal Act, Plaintiff is
24 entitled to any actual damages pursuant to Cal. Civ. Code § 1788.30(a);
25 statutory damages for a knowing or willful violation in the amount up to
26 \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b); and reasonable attorney's
27 fees and costs pursuant to Cal. Civ. Code § 1788.30(c) from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant, and Plaintiff be awarded damages from Defendant, as follows:

- An award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3);
 - An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code § 1788.30(b);
 - An award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c).

39. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted,

HYDE & SWIGART

Date: May 1, 2014

By:s/ Crosby S. Connolly
Crosby S. Connolly
Attorneys for Plaintiff

